

**City Lumber and Hardware, Inc. and Teamsters,  
Warehouse & Miscellaneous Union Local #860,  
affiliated with International Brotherhood of  
Teamsters, AFL-CIO.<sup>1</sup> Case 20-CA-23906-2**

November 18, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on March 12, 1991, the General Counsel of the National Labor Relations Board issued a complaint against City Lumber and Hardware, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On September 30, 1991, the General Counsel filed a Motion for Summary Judgment. On October 4, 1991, the Board issued an order transferring the proceeding to the Board and a notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Acting Regional Attorney for Region 20, by letter dated June 13, 1991, notified the Respondent that unless an answer was received by June 20, 1991, a motion for summary judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a California corporation, has been engaged since March 1, 1991, in the retail sale of lumber hardware products at its facility in San Francisco, California. Based on a projection of its operations since March 1, 1991, the Respondent will annually derive gross revenues in excess of \$500,000 and will purchase and receive at its San Francisco, California facility products, goods, and materials valued in excess of \$2000, which originate from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. *The Representative Status of the Union***

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All warehousemen, lumber handlers, and drivers, employed by the Respondent at its San Francisco, California facility; excluding office clerical employees, guards and supervisors as defined in the Act.

Since on or about March 6, 1991, and at all material times, the Union has been the designated and recognized exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act. This recognition has been embodied in an oral recognition agreement which the Respondent entered into with the Union on March 6, 1991.

**B. *Withdrawal of Recognition***

Since on or about March 7, 1991, the Respondent withdrew its recognition from the Union as the exclusive bargaining representative of the unit employees. We find that the Respondent's withdrawal of recognition violates Section 8(a)(5) and (1) of the Act.

**C. *Discriminatory Discharges***

On or about March 7, 1991, the Respondent discharged employees Ed Brown and Richard Davila because they joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activities. We find

<sup>1</sup> The name of the Charging Party has been changed to reflect the new official name of the International Union.

that the discharge of employees Ed Brown and Richard Davila violates Section 8(a)(3) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. By withdrawing recognition from the Union as the representative of its unit employees from on or about March 7, 1991, the Respondent has violated Section 8(a)(5) and (1) of the Act.

2. By discharging employees Ed Brown and Richard Davila because of their union and concerted activities, and in order to discourage employees from engaging in such activities, the Respondent has violated Section 8(a)(3) and (1) of the Act.

3. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

We shall order the Respondent to recognize and, on request, bargain with the the Union as the representative of its unit employees. We shall also order the Respondent to offer Ed Brown and Richard Davila immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed. Further, the Respondent shall make Brown and Davila whole for any loss of earnings and other benefits they may have suffered as a result of their unlawful discharges by paying them an amount equal to what they would have earned, less interim earnings as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, City Lumber and Hardware, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Teamsters, Warehousemen & Miscellaneous Union Local #860, affiliated with the International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of its employees in the appropriate unit.

(b) Discharging employees because of their union and concerted activities and in order to discourage employees from engaging in such activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the ex-

ercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit:

All warehousemen, lumber handlers, and drivers, employed by the Respondent at its San Francisco, California, facility; excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Offer Ed Brown and Richard Davila immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility at San Francisco, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain with Teamsters, Warehousemen & Miscellaneous Union Local #860, affiliated with the International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of our unit employees.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Teamsters, Warehousemen & Miscellaneous Union Local #860, affiliated with the International Brotherhood

of Teamsters, AFL-CIO, or any other union, or for engaging in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the representative of our employees in the bargaining unit:

All warehousemen, lumber handlers, and drivers, employed by the Respondent at its San Francisco, California facility; excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL offer Ed Brown and Richard Davila immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, plus interest.

WE WILL notify each of them that we have removed from our files any reference to their discharges and that the discharges will not be used against them in any way.

CITY LUMBER AND HARDWARE, INC.